

1647
#9
JL

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Naoki Kimura et al.

Art Unit : 1647

Serial No. : 09/855,266

Examiner : J. Seharaseyon

Filed : May 14, 2001

Title : NOVEL SECRETORY MEMBRANE PROTEIN

RECEIVED
OCT 22 2002
TECH CENTER 1600/2333Commissioner for Patents
Washington, D.C. 20231RESPONSE TO RESTRICTION REQUIREMENT

Responsive to the action mailed September 12, 2002, applicant elects the invention of Group I, claims 1-8, and the species of SEQ ID NO:2. Claims 1-8 read on the elected species. The species election requirement is respectfully traversed.

The Examiner argues as follows:

The claims of Groups I (*sic*) are drawn to multiple polypeptide sequences (SEQ ID NO:1-3). Each of the different polypeptide sequences are independent and distinct because no common structural or functional properties are shared. . . . This requirement is made under 1192 OG 68 Notice (November 19, 1996), as examination of more than one sequence in one application would result in an undue burden on the PTO.

Applicants note that, of SEQ ID NOS:1-3, only SEQ ID NO:1 and 2 are polypeptide sequences. SEQ ID NO:2 differs from SEQ ID NO:1 only in that SEQ ID NO:2 lacks an N-terminal signal peptide sequence (i.e., SEQ ID NO:1 comprises SEQ ID NO:2). SEQ ID NO:3 is a cDNA sequence that encodes SEQ ID NO: 1. Thus, the sequences recited in the claims are structurally and functionally related and it would not be an undue burden to the Examiner to search the elected claims. This is clearly not the situation envisioned by 1192 OG 68, which was promulgated to deal with applications that claim numerous (i.e., more than 10) unrelated

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, Washington, D.C. 20231.

Date of Deposit

October 11, 2002

Signature

Maia Keen
Maia Keen

Typed or Printed Name of Person Signing Certificate

Applicant : Naoki Kimura et al.
Serial No. : 09/855,266
Filed : May 14, 2001
Page : 2

Attorney's Docket No.: 06501-040002 / C1-806PCT-
USD1

sequences. Accordingly, Applicants respectfully request that the species election requirement be withdrawn.

Applicants reserve the right to ask for rejoinder of claims in Group III, of a scope identical to the presently elected polypeptide claims, once the elected claims are deemed allowable (M.P.E.P. § 821.04).

Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: October 11, 2002

Janis K. Fraser, Ph.D., J.D.
Ser. - Reg. No. 34,819

Fish & Richardson P.C.
225 Franklin Street
Boston, Massachusetts 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906